

Environmental Protection Agency

§ 374.4

notice shall be served by personal service upon or by certified mail, return receipt requested, addressed to the United States Attorney General; to the Attorney General of the State in which the violation is alleged to have occurred; and to the head of the Federal agency with delegated responsibility, pursuant to Executive Order 12580, for the CERCLA provision allegedly violated. If the Environmental Protection Agency has the delegated responsibility for the CERCLA provision allegedly violated, then a copy of the notice shall be served by personal service upon or by certified mail, return receipt requested, addressed to the Administrator of the Environmental Protection Agency, and to the Regional Administrator of the Environmental Protection Agency for the Region in which the violation is alleged to have occurred. A list of addresses that may be useful in providing notice of citizen suits is provided at § 374.6. These addresses are subject to change and must be verified prior to use.

(b) *Failure to act.* Service of notice of intent to file suit under subsection 310(a)(2) of the Act shall be accomplished by personal service upon or by certified mail, return receipt requested, addressed to the United States Attorney General and to the head of the agency of the United States (including the Administrator of the Environmental Protection Agency or the Administrator of the Agency for Toxic Substances and Disease Registry), who is alleged to have failed to perform an act or duty which is not discretionary.

(c) *Date of service.* Notice given in accordance with the provisions of this part shall be considered to have been served on the date of receipt. If notice or copy of notice is required to be served on more than one entity, notice shall be considered to have been served on the date of receipt by the last entity served. If service was accomplished by mail, the date of receipt will be considered to be the date noted on the return receipt card.

§ 374.3 Contents of notice.

(a) *Violation of standard, regulation, condition, requirement, or order.* Notice regarding an alleged violation of a standard, regulation, condition, re-

quirement, or order (including any provision of an agreement under section 120 of the Act, relating to Federal facilities) which has become effective under this Act shall include sufficient information to allow the recipient to identify the specific standard, regulation, condition, requirement, or order (including any provision of an agreement under section 120 of the Act, relating to Federal facilities) which has allegedly been violated; the activity or failure to act alleged to constitute a violation; the name and address of the site and facility alleged to be in violation, if known; the person or persons responsible for the alleged violation; the date or dates of the violation; and the full name, address, and telephone number of the person giving notice.

(b) *Failure to act.* Notice regarding an alleged failure of the President or other officer of the United States to perform an act or duty which is not discretionary under the Act shall identify the provisions of the Act which require such act or create such duty; shall describe with reasonable specificity the action taken or not taken by the President or other officer that is claimed to constitute a failure to perform the act or duty; shall identify the Agency and name and title of the officers allegedly failing to perform the act or duty; and shall state the full name, address, and telephone number of the person giving the notice.

(c) *Identification of counsel.* All notices shall state the name, address, and telephone number of the legal counsel, if any, representing the person giving the notice.

[57 FR 55040, Nov. 23, 1992; 57 FR 61612, Dec. 28, 1992]

§ 374.4 Timing of notice.

(a) *Violation of standard, regulation, condition, requirement, or order.* No action may be commenced under subsection 310(a)(1) of the Act before sixty (60) days after the plaintiff has served notice of the violation as specified in § 374.2(c). No action may be commenced under subsection 310(a)(1) of the Act if the President or his or her delegatee has commenced and is diligently prosecuting an action under the Act or under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et*